ants should not be excused. The case would, of course, be quite different if the defendants knew the injurious nature of the book but were honestly certain of its truth. That is properly a question of privilege. Here the defendant is not connected with the act at all. The case is, however, full of suggestion for librarians.

DAVID DUDLEY FIELD was a man whose life-work was directed toward two ends: simplification of procedure, and codification of substantive law. He lived to see the first well accomplished. The cobwebs have been removed and the old wine of justice is no longer kept inaccessible in the cellars of the Circumlocution Office. But while common-law pleading has gone everywhere, barely a State or two has adopted a code of substantive law, and Judge Dillon, in his recent valuable book, is in favor of no greater kind or degree of codification than that recommended by Joseph Story, Theron Metcalf, Simon Greenleaf, and the other Massachusetts Commissioners, who reported on the subject in 1836, eleven years before Mr. Field began to use the broom which has swept away the old forms.

CONSTITUTIONAL LAW: APPROVAL OF BILL AFTER ADJOURNMENT OF CONGRESS. — The various ways in which the President may treat a bill presented to him for consideration are expressly provided for by the Constitution (Art. I. Sec. 7, cl. 2) except one. Of the effect of the President's approval of a bill after Congress adjourns, nothing is said. Whether such a contingency was foreseen by the framers of the Constitution or not, it may be presumed that the omission was intentional and that no provision was expressly made to meet such a case because it was deemed to be sufficiently dealt with by implication. For over a century the practice of the Executive has been in accordance with the general interpretation of this clause, — that an adjournment of Congress within ten days after the bill has been presented to the President, and before he has acted upon it, precludes any further action on his part; but the cases have been so rare in which the President has approved a bill after an adjournment that the right to do so is for the first time judicially considered in the case of *United States* v. *Weil et al.* (Court of Claims, Apr. 1894). In an opinion which shows careful research in its historical treatment of the veto power, Judge Nott explains away the practice and reaches a conclusion contrary to the previously accepted interpretation of the clause. So able is his argument that the question may fairly be termed an open one.

The practice on the part of the Executive of signing a bill only before an adjournment became well established before its inconvenience was foreseen. So fearful were succeeding Presidents lest they should give to an act the suspicion of unconstitutionality that only in two instances has a bill been retained for consideration and approval after an adjournment. President Lincoln signed the Captured Property Act on March 12, 1863, after the term of the Thirty-Seventh Congress had expired, and notwithstanding the fact that the bill did not reach him till after the adjournment. His right to approve the bill was the subject of an adverse report by the House Judiciary Committee of the next Congress, but no vote was taken upon it, and the act became so generally recognized as valid that the constitutionality of the procedure never arose for

judicial inquiry (18 Court of Claims, 700). The only other instance involved the jurisdiction of the Court of Claims in the principal case. A special act referring the cause was submitted to President Harrison on Dec. 20, 1892, and was signed by him on Dec. 28th. Meanwhile, on Dec. 22d, Congress had adjourned for the holidays to Jan. 3, 1893. Thus the bill was signed after an adjournment and within ten days after its presentation. Although the latter case is one of an adjournment for a recess and before the expiration of a congressional term, Judge Nott makes no distinction between it and the first instance where the bill was signed, not only after the close of a session, but even after the congressional term had expired. He would thus make his decision of general application.

The power of approving a bill after the adjournment of Congress is at least not forbidden by the Constitution, and as the disputed point does not involve any limitation on the powers of the States, but simply a question of procedure, the rule of construction that *expressio unius est exclusio alterius* does not apply. Can the power then be reasonably inferred? The last part of clause two provides that a bill shall not become a law if Congress adjourns within ten days after the bill has been presented to the President, but refers only to cases where the bill is not signed. The first part of the clause reads: "Every bill . . . shall, before it becomes a law, be presented to the President; . . . if he approve, he shall sign it; but if not, he shall return it with his objections to that House in which it shall have originated." If the injunction "if he approve he shall sign it" is to be regarded as absolute, complete in itself, and is not to be considered conjunctively with the clause providing for the return of the bill, the case would be clear. The House Judiciary Committee raised the objection that under such an interpretation the President could hold a bill ten months as well as ten days after adjournment. But the objection seems well met by the fact that the Constitution has fixed ten days as a sufficient time for the consideration of bills while Congress is in session, and it is reasonable to suppose that the same limit should apply although an adjournment of Congress intervene. A greater difficulty lies in the fact that the injunctions "he shall sign" and "he shall return" are so connected and dependent that it seems to have been intended that the President, at the time of acting upon a bill, should have the option of signing or vetoing it. But if he veto the bill, he must return it with his objections to the House in which it originated; and if that House has adjourned, it is no longer possible for him to exercise his right of veto. The alternative being taken away, it would seem to follow that the right of approval was also gone. The "pocket veto," it is true, would have the same effect as if the bill had been returned by the President with his objections, but it must be remembered that the "pocket veto" is not properly a veto, and was never intended as an active measure of disapproval. Its very object was to provide for cases of inaction on the part of the Executive.

There are a few cases involving the interpretation of a similar clause in some of the State Constitutions. In New York and Georgia it has been held that the Governor may sign a bill within ten days after it is presented, although the Legislature has adjourned (30 Barb. 24; 21 N. Y. 517; 41 Ga. 157). But in each of these States the Governor had exercised the right for some time before the cases arose, and a contrary decision would have resulted in serious consequences. In the Georgia case the judge stated that as an original question, apart from usage, he would

have decided the other way. The same view of the question has been taken in Iowa, Louisiana, and Illinois (67 Iowa, 702; 22 La. An. 545; 103 U. S. 423), though the cases are not exactly in point. In California (2 Cal. 165) the question was unaffected by usage or otherwise, and the court consistently held that the veto power was a legislative function, and the Governor could not exercise it after the Legislature adjourned. Thus the authorities are conflicting, and they naturally will be until the clause which the State Constitutions have so closely followed has been judicially interpreted by the Supreme Court.

In giving to the President the power to veto, it was intended that every bill should be subjected to his deliberate consideration. That purpose is now defeated as there are so many bills presented to him during the last few days of a session. The evil has long been the subject of comment, and any safe relief will be welcome.

If the usage of a century can be shown to be ill-founded and the more reasonable and broader view of Judge Nott should be followed by the Supreme Court, to which it is understood the principal case is appealed, it will insure more careful legislation and promote the dignity and independence of the Executive.

RECENT CASES.

AGENCY — CONTRACT UNDER SEAL — VALIDITY AS A SIMPLE CONTRACT. — A member of a partnership having no authority to contract for the firm under seal, mortgaged certain personal property of the firm and deeded it to mortgagee under seal, the seal being entirely unnecessary. *Held*, that though the instrument was invalid as a deed, it was operative as a simple contract. *McNeal Pipe and Foundry Co.* v. *Woltman*, 19 S. E. Rep. 109 (N. C.).

The authorities are in conflict upon this point. The doctrine of the case is law in New York and Pennsylvania. *Worrall* v. *Munn*, 5 N. Y. 229; *Alcorn's Executor* v. *Cook*, 101 Pa. St. 209. The contrary view is taken in Georgia and Maine. *Pollard and Co.* v. *Gibbs*, 55 Ga. 45; *Wheeler* v. *Nevins*, 34 Me. 54. It is submitted that the view taken in the principal case is the correct one. A seal has little of its former solemnity, and it seems more sound to reject it as surplusage where it is not essential to the validity of the instrument, but will render it void if not rejected. Its solemnity seems to be the only ground advanced for retaining it.

AGENCY — VICE-PRINCIPAL — FELLOW-SERVANT. — *Held*, that an engineer of a city steam-roller, who has a flagman under his orders and dischargeable by him, in carelessly starting the roller without warning, is the flagman's fellow-servant, not his vice-principal. *Hanna* v. *Granger*, 28 Atl. Rep. 659 (R. I.).

For comment on this case see 8 HARVARD LAW REVIEW, 57.

ASSIGNMENT FOR BENEFIT OF CREDITORS — RELEASE — EFFECT. — A general assignment by insolvent debtors provided for payment in full of such creditors as should accept its terms and execute releases within sixty days of its date, and for distribution of the balance of the assets among the other creditors. Plaintiff, a creditor, under the impression that he had complied with the requirements, executed a release under seal. Subsequently, upon a contest by the creditors, it was adjudged that he had in fact not complied with the requirements of the assignments. *Held*, that the release was none the less effectual to defeat his right of action on the original debt even though it was expressed to be executed in consideration of his having priority over the general creditors. *Claflin Co.* v. *Dacus*, 59 Fed. Rep. 998.

This is a hard case, but in a court of law no other result could have been reached. The release being under seal, the question of consideration becomes immaterial, and, no fraud being suggested, the debt is discharged absolutely. Possibly the plaintiff might be relieved in equity.